

UNITED STATES OF AMERICA,

V.

Defendant.

OPINION AND ORDER

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conviction for Brandishing a Firearm During a Crime of Violence is based on 18 U.S.C. § 924(c)(1)(A). Section 924(c)(1)(A) prohibits the use or possession of a firearm during or in relation to a crime of violence or a drug trafficking crime. “Crime of violence” is defined as an offence that is a felony and:

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. §§ 924(c)(3)(A), (B).

The Supreme Court in *Davis* held that § 924(c)(3)(B) is unconstitutionally vague. *Davis*, 139 S. Ct. at 2336. Thus, if Turnage’s conviction under § 924(c) was based on defining “crime of violence” under § 924(c)(3)(B), Turnage’s conviction would be unconstitutional.

However, Turnage’s conviction was not based on § 924(c)(3)(B). The predicate offence to Turnage’s § 924(c) conviction is Interference with Commerce by Robbery in violation of 18 U.S.C. § 1951(a). Doc #: 1 at 11-12. Interference with Interstate Commerce occurs when someone:

[I]n any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section

18 U.S.C. § 1951(a). The definition of both robbery and extortion involve actual or attempted force against a person or property of another. 18 U.S.C. §§ 1951 (B)(1), (2). Thus, the predicate offence for Turnage’s § 924(c) conviction has an element of use, attempted use, or threatened use of physical force against a person or property of another. Therefore, Turnage’s § 924(c) conviction is based on the constitutional § 924(c)(3)(A), not the unconstitutional § 924(c)(3)(B).

Thus, Turnage's Motion to Correct Sentencing and Request an Attorney, **Doc #: 144**, is
DENIED.

IT IS SO ORDERED.

/s/ Dan Aaron Polster October 29, 2019

Dan Aaron Polster

United States District Judge